

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Southwestern Bell Telephone Company)	IC No. 04-S87111
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER ON RECONSIDERATION

Adopted: November 28, 2007

Released: November 29, 2007

By the Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we deny a Petition for Reconsideration filed by Southwestern Bell Telephone Company (SBC) asking us to reverse a finding that SBC changed Complainant's telecommunications service provider in violation of the Commission's rules by failing to obtain proper authorization and verification.¹ On reconsideration, we affirm that SBC's actions violated the Commission's carrier change rules.²

I. BACKGROUND

2. In December 1998, the Commission adopted rules prohibiting the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.³ The rules were designed to take the profit out of slamming.⁴ The Commission applied the rules to all wireline carriers,⁵ and modified its existing requirements for the authorization and verification of preferred carrier changes.⁶

3. The rules require that a submitting carrier receive individual subscriber consent before a

¹ See Petition for Reconsideration of Southwestern Bell telephone Company (filed Dec. 30, 2004) (*Petition*), seeking reconsideration of *Southwestern Bell Telephone Company*, 19 FCC Rcd 23335 (2004) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB). We note that, subsequent to the filing of the *Petition*, there was a merger between SBC and AT&T, Inc. The name of the merged company is AT&T, Inc. For purposes of resolving this *Petition*, however, we will use the name "SBC."

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ See *id.*; see also 47 U.S.C. § 258(a).

⁴ See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1512, para. 4 (1998) (*Section 258 Order*). See also *id.* at 1518-19, para. 13.

⁵ See *id.* at 1560, para. 85. CMRS providers were exempted from the verification requirements. See *id.*

⁶ See *id.* at 1549, para. 66.

carrier change may occur.⁷ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁸

4. The Commission also adopted liability rules for carriers that engage in slamming.⁹ If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.¹⁰ Where the subscriber has paid charges to the unauthorized carrier, the unauthorized carrier must pay 150% of those charges to the authorized carrier, and the authorized carrier must refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.¹¹

5. The Commission received a complaint on March 26, 2004, alleging that Complainant's telecommunications service provider had been changed from World Discount Telecommunications to SBC without Complainant's authorization.¹² Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹³ the Division notified SBC of the complaint.¹⁴ In its response, SBC stated that authorization was received and confirmed through third party verification (TPV).¹⁵ The Division reviewed the TPV and found that more than one individual responded to the questions asked by the third-party verifier, and that the TPV did not contain a complete verification by either individual.¹⁶ Therefore, the Division found that SBC's actions resulted in an unauthorized change in Complainant's telecommunications service provider.¹⁷ SBC seeks reconsideration of the *Division Order*.

II. DISCUSSION

6. Based on the record before us, we affirm the *Division Order* and deny SBC's *Petition*.

⁷ See 47 C.F.R. § 64.1120; see also 47 U.S.C. § 258(a) (barring carriers from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures).

⁸ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁹ See 47 C.F.R. §§ 64.1140, 64.1160-70.

¹⁰ See 47 C.F.R. §§ 64.1140, 64.1160 (any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change).

¹¹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹² Informal Complaint No. IC 04-S87111, filed March 26, 2004.

¹³ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹⁴ See Notice of Informal Complaint No. IC 04-S87111 to SBC from the Deputy Chief, Division, CGB, dated May 28, 2004.

¹⁵ SBC's Response to Informal Complaint No. IC 04-S87111, received June 25, 2004.

¹⁶ See 47 C.F.R. § 64.1120(c).

¹⁷ See *Division Order*, 19 FCC Rcd 23335 (2004); see also 47 C.F.R. § 64.1150(d).

As discussed below, SBC violated the Commission's carrier change rules by failing to conduct the TPV entirely in the same language as the sales call and by failing to confirm a switch of intraLATA service.

7. In the *Petition*, SBC contends that the *Division Order* was incorrect because the second party to the telephone call was not a second individual responder, but was instead a Polish language translator used by the third-party verifier to communicate with the Polish-speaking Complainant.¹⁸ SBC claims the translator was enabling the third-party verification to be conducted in the same language as the underlying transaction, as required by section 64.1120(c)(3)(iv) of the Commission's rules.¹⁹ SBC asserts that this second individual did not respond to the verification questions independently and served only to translate the verification questions and responses from Complainant.²⁰ SBC states that the *Division Order* erroneously concluded that the translator was providing independent responses to the verification questions, and should thus be reversed.²¹

8. Upon further review of the verification recording, we accept SBC's assertion that the sales call was in Polish and the second person on the TPV was a translator.²² Nonetheless, we find that the TPV violates section 64.1120(c)(3)(iv) because the TPV was not in its entirety conducted in the same language as the sales call.²³ Specifically, on four separate occasions, when the third-party verifier asked Complainant to confirm the telephone numbers to be switched, the telephone numbers were not translated into Polish.²⁴

¹⁸ See *Petition* at 1.

¹⁹ See *Petition* at 1-2. Section 64.1120(c)(3)(iv) of the Commission's rules provides, in relevant part, that: "All third party verifications shall be conducted in the same language that was used in the underlying sales transaction and shall be recorded in their entirety." See 47 C.F.R. § 64.1120(c)(3)(iv).

²⁰ *Petition* at 2.

²¹ *Id.* SBC attached to its *Petition* two exhibits (Exhibit A and Exhibit B). SBC states that Exhibit A is a certified translation of the TPV recording in this proceeding. Exhibit A is titled "Certificate of Accuracy" and is dated December 29, 2004, by SBC's verification contractor who certifies that the transcript of the TPV (also part of Exhibit A) is accurate in exactness and completeness. SBC states that Exhibit B is a declaration from the SBC representative who transferred Complainant to the third-party verifier. Exhibit B is titled "Declaration in Support of Petition for Reconsideration" and is dated December 29, 2004. In Exhibit B, an SBC employee states that while he was working at the SBC Polish bilingual call center, he spoke with Complainant in Polish, and Complainant ordered interLATA and intraLATA service from SBC's long-distance affiliate. After completing the order, the SBC employee states that he transferred Complainant to the third-party verifier and dropped off the call.

²² We stipulate to Exhibit A's certification and contents of the TPV transcript.

²³ See 47 C.F.R. § 64.1120(c)(3)(iv).

²⁴ Below are the four occasions whereby the telephone number was not translated. The interpreter's words spoken in Polish were translated back into English in the TPV transcript provided by SBC, and we reproduce them below.

The first occasion:

Verifier: "OK, [Complainant's telephone number.] The second line ..."

Interpreter's translation: "This is this telephone number."

The second occasion:

Verifier: "OK the second line is [Complainant's telephone number] ..."

Interpreter's translation: "This is this telephone number."

The third occasion:

Verifier: "And the number to be switched are [Complainant's first telephone line, then the beginning of Complainant's second telephone line]?"

Interpreter's translation: "Is it this telephone number?"

9. We also find that the TPV recording violates section 64.1120(c)(3)(iii) of the Commission's rules²⁵ because the verifier failed to confirm authorization for a switch of intraLATA service. Specifically, when the verifier asked "[h]ave you agreed to have your local toll service switched to SBC Long Distance?," the Polish translation of the question was, "[a]lso for local telephone calls?"; and the response was, "[y]es."²⁶ Local telephone service, however, is not the same service as local toll service, and thus the verification did not contain a confirmation of a switch of local toll service, as required by the Commission's rules.²⁷ Accordingly, we deny SBC's *Petition*.

III. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361, 1.106 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.106, 1.719, the *Petition for Reconsideration* filed by Southwestern Bell Telephone Company on December 30, 2004, IS DENIED.

11. IT IS FURTHER ORDERED that this Order is effective UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief
Consumer & Governmental Affairs Bureau

The fourth occasion:

Verifier: "[Complainant's telephone number.] Is this correct?"

Interpreter's translation: "Yes."

See Petition, Exhibit A, TPV transcript at 2 and 3, collectively.

²⁵ 47 C.F.R. § 64.11.20(c)(3)(iii).

²⁶ *See Petition*, Exhibit A, TPV transcript at 3.

²⁷ Local toll service is a term synonymous with intraLATA toll service. Thus, contrary to the SBC employee's claim in Exhibit B, the TPV transcript does not confirm that Complainant ordered intraLATA service.